

***Witzke v. Bouchard, et al.***  
**Case No. 22-cv-13070**

**EXHIBIT 1**

**State Appellate Court Motion for Sanctions**

STATE OF MICHIGAN

IN THE COURT OF APPEALS

IN RE SCOTT ANDREW WITZKE,

COA No. 364784

Petitioner,

Oakland County Circuit Court  
No. 2020-274746-FC

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**SCOTT ANDREW WITZKE**

Petitioner, *in pro per*

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**\*\*AMENDED\*\***

**PETITIONER WITZKE'S MOTION FOR SANCTIONS AGAINST  
RESPONDENT HON. YASMINE I. POLES AND ATTORNEY  
REGINALD G. DOZIER (P38054) UNDER MCR 1.109(E)(5), (E)(6)**

**NOW COMES** Petitioner, Scott Andrew Witzke (hereafter "Petitioner"), *in pro per*, who moves, pursuant to MCR 1.109(E)(5), (E)(6), for imposition of sanctions against both Respondent Hon. Yasmine I. Poles and her counsel, Reginald G. Dozier, Esq. (P38054). In support of the within verified Motion Petitioner states:

## I. FACTS

1. On February 2, 2023, the underlying original action for a writ of superintending control was commenced by Petitioner against Respondent Hon. Yasmine I. Poles (hereafter “Respondent”). MCR 7.203(C)(1); MCR 7.206(B).

2. On February 22, 2023, Respondent, represented by attorney Reginald G. Dozier (P38054) (hereafter “counsel”) and the law firm Lewis & Munday, P.C., filed (1) an “Answer to Petitioner’s Complaint for Writ of Superintending Control” (“Answer”) and (2) a “Brief in Opposition of Petitioner’s Motion” (“Brief”).

3. In her Brief Respondent makes the following statement:

On December 20, 2022, while Witzke’s SmartCommunications account was restricted to only appropriate communications (with no restrictions on US mail privileges or appropriate in person visits), *Witzke used a new SmartCommunications profile under the assumed name of Romieo Armando Diaz*, communicated from Mr. Witzke’s number 313-621-3019, and continued to contact Mr. Contreras. [Brief of Respondent, p 3 (emphasis added)]

4. Respondent cites to her “Ex 11 (12/21/22 email from Investigator)” attached to her Brief to support her statement referenced in ¶ 3, *supra*.

5. Respondent’s Exhibit 11 attached to her Brief (Ex 1, attached hereto) is an email written by an Oakland County Sheriff’s Department Deputy (Vincent Lynch) to Oakland County Assistant Corporation Counsel Brooke E. Tucker (P79776), dated December 21, 2022.

6. The email referenced in ¶ 5 states in its entirety:

Ms. Tucker:

Attached are the two phone calls from Contreras to Witzke from last night. I will continue to forward additional information as I acquire it. Please feel free to call me with any questions or concerns.

Stay well.

Vince [Lynch]  
C-248-431-3279 [Ex 1, attached hereto]

7. Respondent's Exhibit 11 attached to her Brief (Ex 1, attached hereto) does not support Respondent's factual statement, as averred in her Brief at p 3, that "Witzke used a new SmartCommunications profile under the assumed name of Romieo Armando Diaz."

8. Petitioner has *never* created a SmartCommunications "profile" (or "account") under the assumed name "Romieo Armando Diaz" or any other assumed name.

9. To use SmartCommunications one must "Create an Account" by providing personal identifying information. (Ex 2, attached hereto)

10. To use SmartCommunications one must agree to its Terms of Service. (Ex 3, attached hereto)

11. Petitioner's personal account with SmartCommunications was created on June 7, 2021. (Ex 4, p 8, attached hereto)

12. Neither Respondent herself nor her attorney had any basis to form a reasonable belief that the statement made in Respondent's Brief at p 3 to the effect

that “Witzke used a new SmartCommunications profile under the assumed name of Romeo Armando Diaz[]” was “well grounded in fact,” MCR 1.109(E)(5)(b), when incorporating that statement in Respondent’s Brief.

## II. THE LAW AND ARGUMENT

### A. Legal Standards

This Court has previously explained:

The court rules provide that, by signing a document filed with the court, the signer certifies that “to the best of his or her knowledge, information, and belief *formed after reasonable inquiry*, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law,” MCR 1.109(E)(5)(b), and that he or she has not interposed the document “for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation,” MCR 1.109(E)(5)(c). If a signatory signs a document in violation of the rule, the court “*shall impose upon the person who signed it, a represented party, or both, an appropriate sanction*, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees.” [*New Covert Generating Co v Twp of Covert*, 334 Mich App 24, 90-91; 964 NW2d 378 (2020) (emphasis added) (quoting MCR 1.109(E)(6))]

There is no exception (or immunity) to these provisions for parties and counsel who defend in cases brought by *in pro per* parties.

As observed by Justice Zahara, “MCR 2.114 was repealed effective September 1, 2018, more than a year after the trial court denied defendant's motion and subsequently denied reconsideration. Nevertheless, the provisions of the former rule applicable to those who sign frivolous motions have been reincorporated into

the Michigan Court Rules under MCR 1.109(E)(6).” *People v Krestel*, 505 Mich 1139; 944 NW2d 921, 922 n 2 (2020) (Zahara, *J.*, dissenting). Thus, it is appropriate for this Court to look back to our case law regarding former MCR 2.114 when called upon to examine complained of conduct taken under the new MCR 1.109(E) sanction provisions.

“MCR 2.114(D) imposes various requirements of good faith and reasonable inquiry upon the signatories of legal pleadings.” *People v Herrera (On Remand)*, 204 Mich App 333, 337; 514 NW2d 543 (1994) (footnote omitted); see also *Guerrero v Smith*, 280 Mich App 647, 677; 761 NW2d 723 (2008) (“[A]n attorney is under an affirmative duty to conduct a reasonable inquiry into both the factual and legal basis of a document before it is signed.”) (citing *LaRose Market, Inc v Sylvan Center, Inc*, 209 Mich App 201, 210; 530 NW2d 505 (1995)). “The reasonableness of the attorney’s inquiry is determined by an objective standard, *not* the attorney’s subjective good faith.” *Attorney General v Harkins*, 257 Mich App 564, 576; 669 NW2d 296 (2003) (emphasis added).

As this Court has previously explained, “[i]n the context of Fed R Civ P 11 (Rule 11), which imposes similar requirements on attorneys and parties and imposes similar sanctions for violations as MCR 2.114 does, ... a federal court observed that ‘sanctions awarded under Rule 11 ... are essentially deterrent in nature, imposed in an effort to discourage dilatory tactics and the maintenance of untenable positions.’”

*BJ's & Sons Constr Co v Van Sickle*, 266 Mich App 400, 405-406; 700 NW2d 432 (2005) (quoting *Prewitt v Alexander*, 173 F.R.D. 438, 441 (ND Miss, 1996)). “[I]f a violation of MCR 2.114(D) [now MCR 1.109(E)(5)] has occurred, the sanctions provided for by MCR 2.114(E) [now MCR 1.109(E)(6)] are mandatory.” Guerrero, supra, 280 Mich App at 678 (citing *Contel Systems Corp v Gores*, 183 Mich App 706, 710-711; 455 NW2d 398 (1990) (“Since the imposition of a sanction under MCR 2.114 is mandatory upon the finding that a pleading was signed in violation of the court rule ... there is no discretion for the [this] court to exercise in determining if a sanction should be awarded.”)).

**B. Application of Legal Standards to the Facts**

This matter is quite serious from the *in pro per* Petitioner’s standpoint. As must be acknowledged, there are credibility issues which come into play with respect to the underlying Complaint for Writ of Superintending Control. If the *in pro per* Petitioner can be made out to be an untruthful person while engaging in his advocacy for the position that the Respondent trial judge overreached in the matter before this Court, then it will be easier for this Court to conclude that anything that may be said about or by the *in pro per* Petitioner is untrue—evidentiary support or not. Action (deterrence) here must be swift and sure to prevent the *in pro per* Petitioner from being denied a fair opportunity to have his grievances, as set forth in the underlying Complaint, be heard fairly.

Exhibit 11 attached to Respondent's Brief (Exhibit 1 attached hereto) certainly does not form the basis for any accusation made against Petitioner to the effect that "Witzke used a new SmartCommunications profile under the assumed name of Romeo Armando Diaz." There is no other reference to evidentiary support for this fact-statement made by Respondent through her attorney. Respondent's attorney had to obtain his "information" from somewhere because MCR 1.109(E)(5)(b) mandates that some form of "reasonable inquiry" be made prior to attesting to facts stated in pleadings. Any reasonable inquiry would demonstrate that this fact-statement is not "well grounded in fact." *Id.*

**C. Appropriate Sanction**

The rule states that any sanction "*may* include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees." MCR 1.109(E)(6) (emphasis added). The word "may" is permissive in its nature. *Comm to Ban Fracking in Mich v Bd of State Canvassers*, 335 Mich. App. 384, 396; 966 NW2d 742 (2021) ("Courts should generally give the word 'shall' a mandatory meaning and the word 'may' a permissive meaning, 'unless to do so would clearly frustrate legislative intent as evidenced by other statutory language or by reading the statute as a whole.'").

As an *in pro per* party Petitioner is not entitled to attorney fees. *Omdahl v W Iron County Bd of Educ*, 478 Mich. 423, 432; 733 NW2d 380 (2007) (If there is "no



agency relationship between two different people, there [is] no lawyer-client relationship as understood in the law. Therefore, there [are] no ‘actual attorney fees’ for [Petitioner] to recover.”). This fact should not “immunize” a person who violates MCR 1.109(E)(5) from “an appropriate sanction” being imposed under MCR 1.109(E)(6). And the words “may include” such an order does not mean that such an order is the only “appropriate sanction” that is available to this Court to impose.

There are many sanctions, none of which are prohibited, which can be imposed. Striking Respondent-Judge’s Brief is the first option that comes to mind. After all, it is the inclusion of the fact-statement within the Brief which impugns Petitioner’s honesty, which this Court now may not be able to take at face value with respect to the facts asserted within Petitioner’s Complaint, and it is the likely reason that the statement was included within Respondent-Judge’s Brief.

The second option would be to “sanction” both Respondent-Judge<sup>1</sup> and her attorney in the form of a monetary sanction payable to a 501(c) charity of Petitioner’s choosing.

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<sup>1</sup> If it can be demonstrated that Respondent-Judge was not involved in the passing on the “information” which resulted in the inclusion of the fact-statement contained in her Brief, Petitioner would not object to Respondent-Judge not being personally sanctioned by a monetary sanction.

### III. RELIEF REQUESTED

**WHEREFORE**, based upon the foregoing facts and reasoning, Petitioner, Scott Andrew Witzke, *in pro per*, respectfully requests that this Honorable Court **GRANT** the within motion and impose an appropriate sanction against Respondent-Judge and/or her attorney, pursuant to MCR 1.109(E)(6).

Respectfully submitted,

Dated at Pontiac, MI this 23<sup>rd</sup> day of  
February, 2023

/s/ Scott A. Witzke

SCOTT ANDREW WITZKE

Petitioner *in pro per*

### VERIFICATION

“I declare under the penalties of perjury that this **MOTION FOR SANCTIONS AGAINST RESPONDENT HON. YASMINE I. POLES AND ATTORNEY REGINALD G. DOZIER (P38054) UNDER MCR 1.109(E)(5), (E)(6)** has been examined by me and that its factual contents are true to the best of my information, knowledge, and belief.”

Executed at Pontiac, MI this 23<sup>rd</sup> day  
of February, 2023

/s/ Scott A. Witzke

SCOTT ANDREW WITZKE

Petitioner *in pro per*

**EXHIBIT 1**

**“Investigator” Email of 12/21/2022**

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## Tucker, Brooke Elizabeth

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**From:** Lynch, Vince  
**Sent:** Wednesday, December 21, 2022 9:13 AM  
**To:** Tucker, Brooke Elizabeth  
**Subject:** Witzke et al  
**Attachments:** 20221220-213706-05\_049.mp3; 20221220-215258-05\_022.mp3

Ms. Tucker:

Attached are the two phone calls from Contreras to Witzke from last night. I will continue to forward additional information as I acquire it. Please feel free to call me with any questions or concerns.

Stay well.

Vince  
C-248-431-3279



**Deputy Vincent Lynch**  
Conspiracy & Complex Crimes  
Investigative & Forensic Services Division  
1200 N. Telegraph Rd., Bldg. 38E | Pontiac, MI 48341  
Office: 248-858-2868 | Fax: 248-858-1754  
Email: [lynchv@oakgov.com](mailto:lynchv@oakgov.com)  
Web: [www.oaklandsheriff.com](http://www.oaklandsheriff.com)

### ***Oakland County Sheriff's Office***

**OFFICIAL SECURITY NOTICE:** This E-mail (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. Sec. 2510-2521, is confidential and may be official, proprietary or legally privileged. The information is solely for the use of the addressee named above. If you are not the intended recipient, any disclosure, copying, distribution, or other use of the contents of this information is strictly prohibited. No confidentiality or privilege is waived or lost by any mistransmission. If you receive this message in error, please immediately delete it and all copies of it from your system, destroy any hard copies of it and notify the sender. You must not, directly or indirectly, use, disclose, distribute, print, or copy any part of this message if you are not the intended recipient. If you have received this E-mail in error, please notify us by return E-mail and delete this message. Thank you.

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**EXHIBIT 2**




**Smart Communications Account/Personal Identifying Information  
Requirements**

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Create an Account

Creating an account is fast and easy. Enter your information below to proceed. If you already have an account, please log in (log-in.cfm) instead.

Account Details

	<input type="text" value="Username"/>
	<input type="password" value="Password"/>
	<input type="password" value="Confirm Password"/>

Personal Information

	<input type="text" value="First Name"/>
	<input type="text" value="Last Name"/>
	<input type="text" value="Address Line 1"/>
	<input type="text" value="Address Line 2"/>
	<input type="text" value="City"/>
	<input type="text" value="State/Region"/>
	<input type="text" value="Zip/Postal Code"/>
	<input type="text" value="Date of Birth"/>
	<div>- Select Gender -</div>
	<input type="text" value="E-Mail Address"/>
	<input type="text" value="Confirm E-Mail Address"/>

☐ I agree to be bound by the Terms of Service

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Create Account

Copyright © 2023 by Smart Communications. All Rights Reserved.

Privacy Policy (/privacy-policy.cfm) - Terms of Service (/terms-of-service.cfm) - View in English (/create-account.cfm?setLang=en) or Español (/create-account.cfm?setLang=es)

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**EXHIBIT 3**

**Smart Communications Terms of Service**

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## Terms of Service

Revised: January 30, 2016

Welcome to SmartJailMail.com, a convenient way for inmates to communicate with their friends and family. This service is operated by Smart Communications Holdings, Inc. and its affiliated companies and referred to as SmartJailMail.com. By using the SmartJailMail.com Website, (the "Website") you agree to be bound by these Terms of Service (this "Agreement"), whether or not you register as a user of SmartJailMail.com ("Member"). If you wish to become a Member and make use of the SmartJailMail.com service (the "Service"), please read these Terms of Service. If you object to anything in this Agreement or the SmartJailMail.com Privacy Policy, do not use the Website or the Service. The Terms of Service are subject to change by SmartJailMail.com at any time, effective upon posting on the SmartJailMail.com website, and your use of the Service after such posting will constitute acceptance by you of such changes.

### 1. Acceptance of Terms of Service Agreement

- a. **Electronic Agreement** - This Agreement is an electronic contract that sets out the legally binding terms of your use of the Website and your membership in the Service. This Agreement may be modified by SmartJailMail.com from time to time, such modifications to be effective upon posting by SmartJailMail.com on the Website. This Agreement includes SmartJailMail.com's Acceptable Use Policy for Content Posted on the Website, SmartJailMail.com's Privacy Policy, SmartJailMail.com's subscription policies and any notices regarding the Website. By accessing the Website or becoming a Member, you accept this Agreement and agree to the terms, conditions and notices contained or referenced herein.
- b. **Electronic Form** - By accessing the Website or becoming a Member, you consent to have this Agreement provided to you in electronic form.
- c. **Non-electronic Copy** - You have the right to receive this Agreement in non-electronic form. You may request a non-electronic copy of this Agreement either before or after you electronically sign the Agreement. To receive a non-electronic copy of this Agreement, please send an e-mail to support@SmartJailMail.com or a letter and self-addressed stamped envelope to: SmartJailMail.com, 4522 W North B St, Tampa, FL 33609.
- d. **Withdrawing Your Consent** - You have the right at any time to withdraw your consent to have this Agreement provided to you in electronic form.
  - i. **Effect** - Should you choose to withdraw your consent to have this Agreement provided to you in electronic form, we will discontinue your then-current username and password. This means that you will not have the right to use the Service unless, and until, we issue you a new username and password. We only will issue you a new username and password after we receive a signed copy of a non-electronic version of this Agreement, which we will send to you upon request.
  - ii. **Notice** - To withdraw your consent and/or request a non-electronic copy of this Agreement, please send an email to support@SmartJailMail.com or a letter and self-addressed stamped envelope to: SmartJailMail.com, 4522 W North B St, Tampa, FL 33609.
  - iii. **Prospective Nature** - Your withdrawal of consent shall be effective within a reasonable time after we receive your withdrawal notice described above. Your withdrawal of consent will not

affect the legal validity or enforceability of the Agreement provided to, and electronically signed by, you prior to the effective date of your withdrawal.

e. **Access and Retention** - In order to access and retain this electronic Agreement, you must have access to the World Wide Web, either directly or through devices that access web-based content, and pay any service fees associated with such access. In addition, you must use all equipment necessary to make such connection to the World Wide Web, including a computer and modem or other access device. Please print a copy of this document for your records. To retain an electronic copy of this Agreement, you may save it into any word processing program. Via, the Website, we will notify you of any changes in the hardware or software requirements needed to access and/or retain this Agreement that create a material risk that you will not be able to continue to access and/or retain this electronic Agreement.

2. **Eligibility** - You must be at least eighteen (18) years of age to register as a Member of SmartJailMail.com. Membership in the Service is void where prohibited. By using the Website, you represent and warrant that you have the right, authority and capacity to enter into this Agreement and to abide by all of the terms and conditions of this Agreement. Those under the age of 18 may use the Website under the authorization and supervision of a registered Member.
3. **Membership and Subscription; Pricing** - You may become a Member of the Service at no cost. As a Member, you will have the ability to participate in some, but not all, of the features and services available within the Service. In order to access additional features and services, including the ability to communicate with other Members, you must become a paying subscriber to the Service. Please note that the subscription policies that are disclosed to you in subscribing to the service are deemed part of this Agreement. Please see Billing Details for a description of such policies. For purposes of this Agreement the term "Member" includes subscribers, unless where its usage indicates otherwise. From time to time, SmartJailMail.com may remove the accounts of non-subscribers.
4. **Term** - This Agreement will remain in full force and effect while you use the Website and/or are a Member. You may terminate your membership and/or subscription at any time, for any reason, by following the instructions in Account Settings, or by sending SmartJailMail.com written notice of termination to SmartJailMail.com, 4522 W North B St, Tampa, FL 33609 or email notice of termination to support@SmartJailMail.com. If you resign or cancel your membership and/or subscription via the SmartJailMail.com site, to help SmartJailMail.com analyze and improve the Service, you may be asked to provide a reason for your resignation/cancellation. You may bypass this brief resignation survey page and continue the resignation/cancellation process by clicking the "Continue Cancellation" or other similar button on the page. SmartJailMail.com may terminate your membership and/or subscription by sending notice to you at the email address you provide in your application for membership, or such other email address as you may later provide to SmartJailMail.com. If SmartJailMail.com terminates your membership in the Service because you have breached this Agreement, you will not be entitled to any refund of unused subscription fees. All decisions regarding the termination of accounts shall be made in the sole discretion of SmartJailMail.com. SmartJailMail.com is not required to provide you notice prior to terminating your membership and/or subscription. SmartJailMail.com is not required, and may be prohibited, from disclosing a reason for the termination of your account. Even after your membership or subscription is terminated, this Agreement will remain in effect. All terms that by their nature may survive termination of this Agreement shall be deemed to survive such termination.
5. **Non-commercial Use by Members** - The Website is for the personal use of individual Members only and may not be used in connection with any commercial endeavors that have not been approved by SmartJailMail.com in advance in writing. Organizations, companies, and/or businesses may not become

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Members and should not use the Service or the Website for any purpose. Illegal and/or unauthorized uses of the Website, including collecting usernames and/or email addresses of members by electronic or other means for the purpose of sending unsolicited email and unauthorized framing of or linking to the Website may be investigated, and appropriate legal action will be taken, including without limitation, civil, criminal, and injunctive redress. Use of the Website is with the permission of SmartJailMail.com, which may be revoked at any time, for any reason, in SmartJailMail.com's sole discretion.

6. **Account Security** - You are responsible for maintaining the confidentiality of the username and password that you designate during the Registration process, and you are fully responsible for all activities that occur under your username and password. You agree to (a) immediately notify SmartJailMail.com of any unauthorized use of your username or password or any other breach of security, and (b) ensure that you exit from your account at the end of each session. SmartJailMail.com will not be liable for any loss or damage arising from your failure to comply with this provision. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information.
7. **Your Interactions with Other Members** - You are solely responsible for your interactions with other Members. You understand that SmartJailMail.com does not in any way screen its Members, nor does SmartJailMail.com inquire into the backgrounds of its Members or attempt to verify the statements of its Members. SmartJailMail.com makes no representations or warranties as to the conduct of Members. In no event shall SmartJailMail.com be liable for any damages whatsoever, whether direct, indirect, general, special, compensatory, consequential, and/or incidental, arising out of or relating to the conduct of you or anyone else in connection with the use of the Service, including without limitation, bodily injury, emotional distress, and/or any other damages resulting from communications with other registered users of this Service or persons you meet through this Service. You agree to take reasonable precautions in all interactions with other Members of the Service. You should not provide your financial information (for example, your credit card or bank account information) to other Members.

8. **Content on SmartJailMail.com**

- a. **Proprietary Rights** - SmartJailMail.com owns and retains license to all proprietary rights in the Website and the Service. The Website contains the copyrighted material, trademarks, and other proprietary information of SmartJailMail.com, and its licensors. Except for that information which is in the public domain or for which you have been given written permission, you may not copy, modify, publish, transmit, distribute, perform, display, or sell any such proprietary information.

9. **Content Posted by You on SmartJailMail.com**

- a. You are solely responsible for the Content that you publish or display (hereinafter, "post") on the Service, or transmit to other Members. You will not post on the Service, or transmit to other Members, any defamatory, inaccurate, abusive, obscene, profane, offensive, sexually oriented, threatening, harassing, racially offensive, or illegal material, or any material that infringes or violates another party's rights (including, but not limited to, intellectual property rights, and rights of privacy and publicity). You will not provide inaccurate, misleading or false information to the Company or to any other Member. If information provided to SmartJailMail.com, or another Member, subsequently becomes inaccurate, misleading or false, you will promptly notify SmartJailMail.com of such change.
- b. You understand and agree that SmartJailMail.com or the correctional facility where inmates are housed may review and delete any content, messages, or photos (collectively, "Content"), in each case in whole or in part, that in the sole judgment of SmartJailMail.com or the correctional facility violate this

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Agreement or which might be offensive, illegal, or that might violate the rights, harm, or threaten the safety of Members.

- c. By posting Content to SmartJailMail.com, you automatically grant, and you represent and warrant that you have the right to grant, to SmartJailMail.com, its affiliates, licensees and successors, an irrevocable, perpetual, non-exclusive, fully paid, worldwide license to use, copy, perform, display, reproduce, adapt, modify and distribute such information and content and to prepare derivative works of, or incorporate into other works, such information and content, and to grant and authorize sublicenses of the foregoing. You further represent and warrant that public posting and use of your content by SmartJailMail.com will not infringe or violate the rights of any third party.
- d. The following is a partial list of the kind of Content that is illegal or prohibited on the Website. SmartJailMail.com reserves the right to investigate and take appropriate legal action in its sole discretion against anyone who violates this provision, including without limitation, removing the offending communication from the Service and terminating the membership of such violators. It includes, but is not limited to, Content that:
  - is patently offensive to the online community, such as Content that promotes racism, bigotry, hatred or physical harm of any kind against any group or individual;
  - harasses or advocates harassment of another person;
  - involves the transmission of "junk mail", "chain letters," or unsolicited mass mailing or "spamming";
  - promotes information that you know is false, misleading or promotes illegal activities or conduct that is abusive, threatening, obscene, defamatory or libelous;
  - promotes an illegal or unauthorized copy of another person's copyrighted work, such as providing pirated computer programs or links to them, providing information to circumvent manufacture-installed copy-protect devices, or providing pirated images, audio or video, or links to pirated images, audio or video files;
  - contains restricted or password only access pages, or hidden pages or images (those not linked to or from another accessible page);
  - provides material that exploits people under the age of 18 in a sexual or violent manner, or solicits personal information from anyone under the age of 18;
  - provides instructional information about illegal activities such as making or buying illegal weapons, violating someone's privacy, or providing or creating computer viruses;
  - solicits passwords or personal identifying information for commercial or unlawful purposes from other users; and
  - engages in commercial activities and/or sales without our prior written consent such as contests, sweepstakes, barter, advertising, and pyramid schemes.
- e. Your use of the Service, including but not limited to the Content you post on the Service, must be in accordance with any and all applicable laws and regulations.
- f. You may not engage in advertising to, or solicitation of, other Members. This includes but is not limited to solicitation or advertising to buy or sell any products or services through the Service or networking

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for commercial purposes. You may not transmit any chain letters or junk email to other Members. It is a violation of these rules to use any information obtained from the Service in order to harass, abuse, or harm another person, or in order to contact, advertise to, solicit, or sell to any Member without our prior explicit consent. In order to protect our Members from such advertising or solicitation, we reserve the right to restrict the number of emails which a Member may send to other Members in any 24-hour period to a number which we deem appropriate in our sole discretion.

g. All information you include in your Member profile must be accurate, current and complete.

**10. Prohibited Activities** - SmartJailMail.com reserves the right to investigate and terminate your membership if you have misused the Service, or behaved in a way which could be regarded as inappropriate or whose conduct is unlawful or illegal. The following is a partial list of the type of actions that you may not engage in with respect to the Service:

- You will not use the Service to provide legal services, legal advice, or in an official capacity as an attorney or bondsperson, or to send any communications that should be deemed private, privileged, or confidential unless a specific agreement to do so has been established between You and SmartJailMail.com.
- You will not copy and paste or otherwise pass messages between or act as a corrier between inmates. Inmates will not ask other users to pass messages to another inmate.
- You will not impersonate any person or entity.
- You will not "stalk" or otherwise harass any person.
- You will not express or imply that any statements you make are endorsed by SmartJailMail.com without our specific prior written consent.
- You will not use any robot, spider, site search/retrieval application, or other manual or automatic device or process to retrieve, index, "data mine", or in any way reproduce or circumvent the navigational structure or presentation of the Service or its contents.
- You will not post, distribute or reproduce in any way any copyrighted material, trademarks, or other proprietary information without obtaining the prior consent of the owner of such proprietary rights.
- You will not remove any copyright, trademark or other proprietary rights notices contained in the Service.
- You will not interfere with or disrupt the Services or the site or the servers or networks connected to the Services or the site.
- You will not post, email or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment.
- You will not forge headers or otherwise manipulate identifiers in order to disguise the origin of any information transmitted through the Service.
- You will not "frame" or "mirror" any part of the Service or the Website, without SmartJailMail.com's prior written authorization. You also shall not use meta tags or code or other devices containing any reference to SmartJailMail.com or the Service or the site in order to direct any person to any other web site for any purpose.

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- You will not modify, adapt, sublicense, translate, sell, reverse engineer, decipher, decompile or otherwise disassemble any portion of the Service or the Website or any software used on or for the Service or cause others to do so.

11. **Customer Service** - SmartJailMail.com provides assistance and guidance through its customer care representatives. When communicating with our customer care representatives, you may not be abusive, obscene, profane, offensive, sexist, threatening, harassing, racially offensive, or otherwise behave inappropriately. If we feel that your behavior towards any of our customer care representatives or other employees is at any time threatening or offensive, we reserve the right to immediately terminate your membership and you will not be entitled to any refund of unused subscription fees.

12. **Subscriptions; Charges on Your Billing Account**

- General** - SmartJailMail.com bills you through an online account (your "Billing Account") for use of the Service. You agree to pay SmartJailMail.com all charges at the prices then in effect for any use of the Service by you or other persons (including your agents) using your Billing Account, and you authorize SmartJailMail.com to charge your chosen payment provider (your "Payment Method") for the Service. You agree to make payment using that selected Payment Method. SmartJailMail.com reserves the right to correct any errors or mistakes that it makes even if it has already requested or received payment.
- Recurring Billing** - SmartJailMail.com does not make use of recurring billing. Each charge is authorized at the point of purchase.
- Current Information Required** - YOU MUST PROVIDE CURRENT, COMPLETE AND ACCURATE INFORMATION FOR YOUR BILLING ACCOUNT. YOU MUST PROMPTLY UPDATE ALL INFORMATION TO KEEP YOUR BILLING ACCOUNT CURRENT, COMPLETE AND ACCURATE (SUCH AS A CHANGE IN BILLING ADDRESS, CREDIT CARD NUMBER, OR CREDIT CARD EXPIRATION DATE), AND YOU MUST PROMPTLY NOTIFY SmartJailMail.com IF YOUR PAYMENT METHOD IS CANCELED (E.G., FOR LOSS OR THEFT) OR IF YOU BECOME AWARE OF A POTENTIAL BREACH OF SECURITY, SUCH AS THE UNAUTHORIZED DISCLOSURE OR USE OF YOUR USER NAME OR PASSWORD. CHANGES TO SUCH INFORMATION CAN BE MADE AT ACCOUNT SETTINGS.
- Payment Method** - The terms of your payment will be based on your Payment Method and may be determined by agreements between you and the financial institution, credit card issuer or other provider of your chosen Payment Method (the "Payment Method Provider"). If SmartJailMail.com does not receive payment from your Payment Method Provider, you agree to pay all amounts due on your Billing Account upon demand.
- Reaffirmation of Authorization** - Your non-termination or continued use of the Service reaffirms that SmartJailMail.com is authorized to charge your Payment Method. SmartJailMail.com may submit those charges for payment and you will be responsible for such charges. This does not waive SmartJailMail.com's right to seek payment directly from you. Your charges may be payable in advance, in arrears, per usage, or as otherwise described when you initially subscribed to the Service.
- No Refunds** - SmartJailMail.com will not issue refunds on any portion of fees charged or services that you later decide not to use.
- Liability** - In some situations a correctional facility may refuse to deliver a message or attachment to an inmate. In these situations, regardless of the reason for refusal, neither the correctional facility nor

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SmartJailMail.com shall be liable to you for the cost of credits used to send the message and/or attachment. If an inmate is relocated, transferred, discharged, placed in confinement, has their account disabled, or otherwise is temporarily or permanently no longer able to use the Service for any reason, neither the correctional facility nor SmartJailMail.com shall be liable to you for the cost of credits used to send unread messages and/or attachments, nor for unused credits remaining on your account or unused credits that have been transferred to the inmate's account.

13. **Modifications to Service** - SmartJailMail.com reserves the right at any time to modify or discontinue, temporarily or permanently, the Service (or any part thereof) with or without notice. You agree that SmartJailMail.com shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Service.
14. **Blocking of IP Addresses** - In order to protect the integrity of the Service, SmartJailMail.com reserves the right at any time in its sole discretion to block Members from certain IP addresses from accessing the Website.
15. **Copyright Policy** - You may not post, distribute, or reproduce in any way any copyrighted material, trademarks, or other proprietary information without obtaining the prior written consent of the owner of such proprietary rights. Without limiting the foregoing, if you believe that your work has been copied and posted on the Service in a way that constitutes copyright infringement, please provide our Copyright Agent with the following information: an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; a description of the copyrighted work that you claim has been infringed; a description of where the material that you claim is infringing is located on the Website; your address, telephone number, and email address; a written statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf. SmartJailMail.com's Copyright Agent for notice of claims of copyright infringement can be reached as follows: SmartJailMail.com Legal, 4522 W North B St, Tampa, FL 33609.
16. **Member Disputes** - You are solely responsible for your interactions with other SmartJailMail.com Members. SmartJailMail.com reserves the right, but has no obligation, to monitor disputes between you and other Members.
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20. **Limitation on Liability** - Except in jurisdictions where such provisions are restricted, in no event will SmartJailMail.com be liable to you or any third person for any indirect, consequential, exemplary, incidental, special or punitive damages, including also lost profits arising from your use of the Web site or the Service, even if SmartJailMail.com has been advised of the possibility of such damages. Notwithstanding anything to the contrary contained herein, SmartJailMail.com's liability to you for any cause whatsoever, and regardless of the form of the action, will at all times be limited to the amount paid, if any, by you to SmartJailMail.com for the Service during the term of membership.
21. **U.S. Export Controls** - Software from this Website (the "Software") is further subject to United States export controls. No Software may be downloaded from the Website or otherwise exported or re-exported (i) into (or to a national or resident of) Cuba, Iraq, Libya, North Korea, Iran, Syria, or any other Country to which the U.S. has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. By downloading or using the Software, you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.
22. **Jurisdiction and Choice of Law** - If there is any dispute arising out of the Website and/or the Service, by using the Website, you expressly agree that any such dispute shall be governed by the laws of the State of Florida, without regard to its conflict of law provisions, and you expressly agree and consent to the exclusive jurisdiction and venue of the state and federal courts of the State of Florida, in Manatee County, for the resolution of any such dispute.
23. **Indemnity by You** - You agree to indemnify and hold SmartJailMail.com, its subsidiaries, affiliates, officers, agents, and other partners and employees, harmless from any loss, liability, claim, or demand, including reasonable attorney's fees, made by any third party due to or arising out of your use of the Service in violation of this Agreement and/or arising from a breach of this Agreement and/or any breach of your representations and warranties set forth above.
24. **No Third Party Beneficiaries** - You agree that, except as otherwise expressly provided in this Agreement, there shall be no third party beneficiaries to this Agreement.
25. **Other** - This Agreement contains the entire agreement between you and SmartJailMail.com regarding the use of the Website and/or the Service. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect.

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Please contact us with any questions regarding this agreement.

## Required Notifications

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**EXHIBIT 4**

**Smart Communications Transactions & Account Creation Date**

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## Transaction History

If you have any questions about how your message credits were used, this screen shows your credit balance and how each credit was used.

12/13/2022 at 6:11 AM Transferred to KEITH KOERBER	-50 1,250
12/13/2022 at 6:11 AM Sent a message to KEITH KOERBER	-50 1,300
12/13/2022 at 5:21 AM Transferred to KEITH KOERBER	-50 1,350
12/13/2022 at 5:21 AM Sent a message to KEITH KOERBER	-50 1,400
12/13/2022 at 4:48 AM Accepted COD message from KEITH KOERBER (143910077)	-50 1,450
12/13/2022 at 4:48 AM Accepted COD message from KEITH KOERBER (143936664)	-50 1,500
12/13/2022 at 4:48 AM Accepted COD message from KEITH KOERBER (143941988)	-50 1,550
12/13/2022 at 4:40 AM Accepted COD message from KEITH KOERBER (143957906)	-50 1,600
12/12/2022 at 2:04 PM Transferred to MICHAEL RUSSELL	-50 1,650
12/12/2022 at 2:04 PM Sent a message to MICHAEL RUSSELL	-50 1,700
12/12/2022 at 2:00 PM Transferred to RAUL CONTERAS	-500 1,750
12/12/2022 at 1:59 PM Credit Card Purchase	2,000 2,250
12/12/2022 at 1:58 PM Transferred to RAUL CONTERAS	

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	-50
12/12/2022 at 1:58 PM	250
Sent a message to RAUL CONTERAS	-50
	300
12/12/2022 at 1:36 PM	-50
Transferred to RAUL CONTERAS	350
12/12/2022 at 1:36 PM	-50
Sent a message to RAUL CONTERAS	400
12/12/2022 at 10:13 AM	-50
Sent a message to RAUL CONTERAS	450
12/12/2022 at 9:11 AM	-50
Sent a message to RAUL CONTERAS	500
12/12/2022 at 4:41 AM	-50
Sent a message to RAUL CONTERAS	550
12/12/2022 at 4:30 AM	-50
Sent a message to AARON ELMY	600
12/11/2022 at 4:47 PM	-50
Sent a message to RAUL CONTERAS	650
12/11/2022 at 3:27 PM	-50
Sent a message to RAUL CONTERAS	700
12/10/2022 at 6:09 PM	-50
Sent a message to RAUL CONTERAS	750
12/10/2022 at 3:15 PM	-100
Delivered a photo to RAUL CONTERAS	800
12/10/2022 at 3:15 PM	100
Photo Reviewed and Approved	900
12/10/2022 at 3:06 PM	-50
Sent a message to RAUL CONTERAS	800
12/10/2022 at 3:05 PM	-100
Submitted photo to RAUL CONTERAS for review.	850
12/10/2022 at 12:55 PM	-50
Sent a message to RAUL CONTERAS	950

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12/10/2022 at 12:37 PM	
Credit Card Purchase	1,000
	1,000
12/10/2022 at 12:23 PM	
Sent a message to RAUL CONTERAS	-50
	0
12/10/2022 at 9:11 AM	
Sent a message to RAUL CONTERAS	-50
	50
12/09/2022 at 4:36 AM	
Sent a message to RAUL CONTERAS	-50
	100
12/08/2022 at 5:53 PM	
Sent a message to RAUL CONTERAS	-50
	150
12/08/2022 at 1:02 PM	
Sent a message to KEITH KOERBER	-50
	200
12/08/2022 at 12:22 PM	
Sent a message to RAUL CONTERAS	-50
	250
12/08/2022 at 12:20 PM	
Sent a message to MICHAEL RUSSELL	-50
	300
12/08/2022 at 9:32 AM	
Transferred to KEITH KOERBER	-50
	350
12/08/2022 at 9:32 AM	
Sent a message to KEITH KOERBER	-50
	400
12/08/2022 at 9:21 AM	
Accepted COD message from KEITH KOERBER (143889936)	-50
	450
12/08/2022 at 9:20 AM	
Credit Card Purchase	500
	500
11/01/2022 at 4:54 PM	
Sent a message to KEITH KOERBER	-50
	0
11/01/2022 at 3:14 PM	
Sent a message to KEITH KOERBER	-50
	50
11/01/2022 at 2:03 PM	
Sent a message to KEITH KOERBER	-50
	100

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11/01/2022 at 1:54 PM	
Sent a message to KEITH KOERBER	-50 150
11/01/2022 at 1:17 PM	
Sent a message to KEITH KOERBER	-50 200
11/01/2022 at 12:55 PM	
Sent a message to KEITH KOERBER	-50 250
11/01/2022 at 12:39 PM	
Sent a message to KEITH KOERBER	-50 300
11/01/2022 at 8:37 AM	
Sent a message to KEITH KOERBER	-50 350
10/31/2022 at 8:54 PM	
Sent a message to KEITH KOERBER	-50 400
10/31/2022 at 8:16 PM	
Sent a message to KEITH KOERBER	-50 450
10/31/2022 at 7:15 PM	
Sent a message to KEITH KOERBER	-50 500
10/31/2022 at 6:51 PM	
Sent a message to KEITH KOERBER	-50 550
10/31/2022 at 6:23 PM	
Sent a message to KEITH KOERBER	-50 600
10/31/2022 at 5:39 PM	
Sent a message to KEITH KOERBER	-50 650
10/31/2022 at 2:05 PM	
Sent a message to KEITH KOERBER	-50 700
10/31/2022 at 1:38 PM	
Sent a message to KEITH KOERBER	-50 750
10/31/2022 at 12:30 PM	
Sent a message to KEITH KOERBER	-50 800
10/29/2022 at 9:21 PM	
Sent a message to AARON ELMY	-50 850

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10/29/2022 at 11:57 AM	
Sent a message to KEITH KOERBER	-50 900
10/28/2022 at 8:59 PM	
Sent a message to KEITH KOERBER	-50 950
10/28/2022 at 8:55 PM	
Credit Card Purchase	1,000 1,000
10/28/2022 at 1:12 PM	
Sent a message to KEITH KOERBER	-50 0
10/28/2022 at 10:13 AM	
Sent a message to KEITH KOERBER	-50 50
10/28/2022 at 2:40 AM	
Sent a message to KEITH KOERBER	-50 100
10/27/2022 at 8:57 PM	
Sent a message to KEITH KOERBER	-50 150
10/27/2022 at 8:43 PM	
Sent a message to KEITH KOERBER	-50 200
10/27/2022 at 7:50 PM	
Sent a message to KEITH KOERBER	-50 250
10/27/2022 at 7:44 PM	
Sent a message to AARON ELMY	-50 300
10/11/2022 at 6:35 PM	
Sent a message to KEITH KOERBER	-50 350
10/11/2022 at 6:16 PM	
Sent a message to KEITH KOERBER	-50 400
10/11/2022 at 6:07 PM	
Sent a message to KEITH KOERBER	-50 450
10/11/2022 at 12:12 PM	
Sent a message to KEITH KOERBER	-50 500
10/11/2022 at 8:30 AM	
Sent a message to KEITH KOERBER	-50 550

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10/11/2022 at 7:55 AM	
Delivered a photo to KEITH KOERBER	-100 600
10/11/2022 at 7:55 AM	
Photo Reviewed and Approved	100 700
10/10/2022 at 8:54 PM	
Submitted photo to KEITH KOERBER for review.	-100 600
10/10/2022 at 8:53 PM	
Sent a message to KEITH KOERBER	-50 700
10/10/2022 at 7:38 PM	
Sent a message to KEITH KOERBER	-50 750
10/10/2022 at 7:14 PM	
Sent a message to KEITH KOERBER	-50 800
10/10/2022 at 2:11 PM	
Sent a message to KEITH KOERBER	-50 850
10/10/2022 at 11:57 AM	
Sent a message to KEITH KOERBER	-50 900
10/06/2022 at 2:55 PM	
Sent a message to AARON ELMY	-50 950
10/06/2022 at 2:49 PM	
Credit Card Purchase	1,000 1,000
10/06/2022 at 6:04 AM	
Sent a message to AARON ELMY	-50 0
09/13/2022 at 11:33 AM	
Sent a message to AARON ELMY	-50 50
09/10/2022 at 6:42 PM	
Sent a message to AARON ELMY	-50 100
09/10/2022 at 6:57 AM	
Sent a message to AARON ELMY	-50 150
09/10/2022 at 2:12 AM	
Transferred to KEITH KOERBER	-50 200

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09/10/2022 at 2:12 AM	
Sent a message to KEITH KOERBER	-50 250
07/03/2021 at 5:12 PM	
Accepted COD message from ROSS PETERSON (92948664)	-50 300
06/08/2021 at 6:21 PM	
Sent a message to ROSS PETERSON	-50 350
06/08/2021 at 5:55 PM	
Sent a message to ROSS PETERSON	-50 400
06/08/2021 at 4:38 PM	
Sent a message to ROSS PETERSON	-50 450
06/07/2021 at 7:08 PM	
Transferred to ROSS PETERSON	-500 500
06/07/2021 at 7:07 PM	
Credit Card Purchase	1,000 1,000
06/07/2021 at 7:05 PM	
Sent a message to ROSS PETERSON	-50 0
06/07/2021 at 7:04 PM	
Accepted COD message from ROSS PETERSON (91787814)	-50 50
06/07/2021 at 7:04 PM	
Transferred to ROSS PETERSON	-300 100
06/07/2021 at 7:03 PM	
Sent a message to ROSS PETERSON	-50 400
06/07/2021 at 6:51 PM	
Sent a message to ROSS PETERSON	-50 450
06/07/2021 at 6:51 PM	
Connection Request Approved. Pending Message Delivered.	50 500
06/07/2021 at 6:03 PM	
Sent a message to ROSS PETERSON pending connection request acceptance.	-50 450
06/07/2021 at 5:57 PM	
Credit Card Purchase	500 500

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06/07/2021 at 5:52 PM

Account Created

0  
0

Return to Account Settings (account-settings.cfm)

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**STATE OF MICHIGAN**

MI Court of Appeals

**Proof of Service**

<b>Case Title:</b> IN RE WITZKE	<b>Case Number:</b> 364784
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Scott Witzke	scottawitzke@gmail.com	e-Serve

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